

RECEIVED
CENTRAL FAX CENTER
FEB 02 2007

REMARKS

Applicants have received and reviewed an Office Action dated November 2, 2006. Applicants respectfully request reconsideration of the present case in view of the above amendments and the following remarks.

Claims 1-84 are currently pending. Claims 5 and 9 have been amended only for clarification. No new matter has been inserted. For the reasons given below, Applicants submit that the amended and newly presented claims are in condition for allowance and notification to that effect is earnestly solicited.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-5, 7-9 and 84 were rejected under 35 U.S.C. § 103(a) over Pletcher (1998). Applicants respectfully traverse.

Applicant's invention includes extracts of *Sesamum indicum* and *Centella Asiatica* in combination with other ingredients. The total amount of extract, as set forth in the ranges of claim 1, is between 3 and 35 percent by weight. Thus, claim 1 is drawn to a composition wherein the weight percentages of both extracts add up to less than 100%. Further, the ranges of weight percentages for the two specified ingredients overlap and therefore can be equal. Applicant discloses in the specification that alcohol and carbohydrates, as well as other optional ingredients, make up the bulk of the composition of the invention.

Pletcher discloses simmering *Centella Asiatica* leaves in the oil of *Sesamum indicum*. This would result in a percentage of *Centella Asiatica* with the bulk of the weight percent of the mixture being the oil of *Sesamum indicum*. The total amount of the two ingredients would, by definition, add up to 100 weight percent. The total amount of extract in Applicant's formulation is between 3 and 35%. Pletcher cannot be said to teach or suggest the range of total amount of extract employed by Applicants. There is no teaching or suggestion in Pletcher to take the mixture of ingredients and dilute it with some other ingredient. In fact, dilution of the formulation of Pletcher would result in a loss of aromatherapeutic properties of the leaves. It is

likely that diluting the formulation to a total amount of extract of 35% or less would render the formulations of Pletcher useless for aromatherapeutic purposes. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

Further, the product of simmering *Centella Asiatica* leaves in oil of *Sesamum indicum* would be whole leaf matter in oil. Applicants' invention is not whole leaf matter in oil. Such a formulation would not be desirable for ingestion as an elixir or syrup, or suitable for enclosure in a capsule, for example. Instead, Applicant's invention is drawn to the extracts of both *Sesamum indicum* and *Centella Asiatica*, which are then combined with other ingredients to form the composition of the invention. There is no teaching or suggestion in Pletcher to extract plant matter in alcohol, as does Applicant, to result in an extract. There is no teaching or suggestion in Pletcher to combine the dried extracts with other ingredients. And there is no teaching or suggestion in Pletcher to ingest the mixture.

Claim 1 is thus allowable over Pletcher. Accordingly, based on the foregoing differences, Applicants respectfully submit that the cited reference neither teaches nor suggests the presently claimed invention as described in claim 1. All remaining claims ultimately depend from claim 1 and therefore represent further limitations to the subject matter of claim 1. Withdrawal of this rejection is respectfully requested.

RECEIVED
CENTRAL FAX CENTER

FEB 02 2007

Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903
(612) 332-5300

Date:

2 Feb '07

MTS:kf

Mark T. Skoog
Mark T. Skoog
Reg. No. 40,178

23552

PATENT TRADEMARK OFFICE